

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Baxley

Faxed: May 25, 2005

Opposition No. 91160978

Perfect Foods, Inc.

v.

John D. Gullahorn

Andrew P. Baxley, Interlocutory Attorney:

At approximately 3:45 p.m. EDT on the afternoon of May 25, 2005, opposer's counsel contacted the Board attorney assigned to this case by telephone to inquire about Board procedure in connection with telephone depositions. In particular, opposer's counsel indicated that he sought to attend applicant's testimony deposition, which is scheduled to commence on May 26, 2005 at 9 a.m., by telephone, but that applicant would not consent to his so attending. The Board attorney stated that any request to so attend by telephone must be raised via a motion. See Fed. R. Civ. P. 30(b)(7). Opposer filed such motion at approximately 5:10 p.m. EDT on that afternoon.

Because of the time-sensitive nature of the motion at issue, the Board attorney determined that such motion should be decided by telephone conference. Such telephone

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conference was held at 5:55 p.m. EDT on May 25, 2005 between opposer's counsel, Dennis Griggs, applicant, and the Board interlocutory attorney assigned to this case, Andrew Baxley.

As a preliminary matter, the Board notes that applicant indicated in a December 30, 2004 filing with the Board that he and his wife are handling this case. Applicant, however, admitted during the telephone conference that his wife is not an attorney. Accordingly, she may not represent applicant herein. See Trademark Rules 2.17 and 10.14(a)-(c) and (e); TBMP Sections 114.01 and 114.03 to 114.05 (2d ed. rev. 2004).

In support of opposer's motion, opposer contends that its counsel asked applicant on May 20, 2005 to consent to its counsel's appearance at applicant's testimony by deposition by telephone and that its counsel did not receive any indication that applicant did not so consent until he received a letter from applicant on the afternoon of May 25, 2005, i.e., the day before applicant's testimony deposition was scheduled to take place. Opposer further contends that federal court practice favors the use of telephone depositions and therefore asks that its attorney be allowed to attend applicant's testimony deposition by telephone.

In response, applicant contends that his wife, who will be reading questions to him during his deposition and who has been designated as a witness for applicant, is hearing

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impaired and that, accordingly, opposer's counsel's appearance at the deposition by telephone will be frustrating. Applicant further contends that opposer's counsel should have no difficulty attending applicant's testimony deposition in person.

A deposition may be taken or attended by telephone either by stipulation of the parties or upon motion granted by the Board. See Fed. R. Civ. P. 30(b)(7); and *Hewlett-Packard Co. v. Healthcare Personnel Inc.*, 21 USPQ2d 1552 (TTAB 1991). Current federal practice favors the use of technological benefits in order to promote flexibility, simplification of procedure, and reduction of cost to parties. See *Julia M. Bywaters v. Lloyd K. Bywaters*, 123 F.R.D. 175 (E.D.Pa. 1988). Nothing in the language of Rule 30(b)(7) requires a showing of necessity, financial inability, or other hardship to obtain an order to proceed via telephone, and leave to take and/or attend telephonic depositions should be liberally granted. See *Jahr v. IU International Corp.*, 4 Fed. R. Serv.3d 943 (M.D.N.C. 1986).

The Board notes that applicant is located in Cantonment, Florida, while opposer's counsel is located in Dallas, Texas.¹ Accordingly, attending applicant's testimony deposition by telephone will save opposer

¹ A review of the www.mapquest.com database indicates that a drive from Dallas, Texas to Pensacola, Florida, the site of applicant's testimony deposition, is approximately 650 miles.

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considerable time and expense. In addition, the Board notes that advances in telephony for the hearing impaired should be able to accommodate the hearing impairment of applicant's wife.² Based on the foregoing, the Board finds that applicant has not provided a sufficient reason to require opposer's counsel to attend applicant's testimony deposition in person.

In view thereof, opposer's motion for leave to attend applicant's testimony deposition by telephone is granted. Opposer's counsel may attend applicant's testimony deposition via telephone.³ If applicant's wife is deposed, the Board expects the parties to work together, including using appropriate equipment, to accommodate her hearing impairment.

Testimony periods remain as set.

² The Board notes that applicant's wife participated by telephone in scheduling the telephone conference in which the motion at issue in this order was decided.

³ The parties were informed of the Board's decision at the conclusion of the May 25, 2005 telephone conference. Because this decision has been sent by facsimile to the parties, a mailed copy will not follow.

FAX

TRADEMARK TRIAL AND APPEAL BOARD
P.O. BOX 1451
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(571) 272-4250 office
(571) 273-0059 fax

DATE: May 25, 2005

TO: Dennis G. S. S. (972-732-9218)

FROM: Andrew Buxley

PAGES: 5

SUBJECT: Opposition 91160978

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TO: John D. Gullhorn (850-478-8355)

FROM: Andrew Baxley

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